bureau; but the preceding section, *supra*, as hereinbefore stated, expressly excepts the Highway Commission from the operation of that act.

The purpose of the proviso in this instance, in my opinion, was to place restrictions on the purchases of equipment by officers and departments whose duties in this respect are within the class governed by the act creating the central purchasing agency.

Your request indicates that the Highway Commission has experienced difficulty in the purchase of automobiles, due to the increase in prices. The Legislature could hardly be deemed to have intended that the work of the Commission should be hampered for lack of necessary equipment. Though my conclusions hereinbefore stated are not to be construed as sanctioning the exercise of arbitrary power in the purchase of equipment, I think the Commission has the authority, under the competitive bidding system defined in the acts governing the Commission, to purchase necessary equipment as the exigencies of the conditions warrant. This power, as in the case of all statutory agencies, should be performed within the rule that requires the exercise of reasonable discretion.

For the reasons stated, I am of the opinion that the provision of the Appropriation Act out of which your question arises is not applicable to purchases of equipment, including automobiles, by the State Highway Commission and that the Commission's authority in this respect is governed by provisions of the State Highway legislation.

OFFICIAL OPINION NO. 3

February 11, 1947.

Mr. Leroy E. Yoder, Chairman,
Public Service Commission of Indiana,
State House,
Indianapolis, Indiana.

Dear Sir:

This is in answer to your request for an opinion as to the legality of a rate schedule submitted by the Indianapolis

Power and Light Company to the Public Service Commission of Indiana on December 26, 1946, for approval by the Commission. The particular question raised by this schedule of rates is whether or not the "resale of energy" provision in the proposed tariff should be approved by the Commission.

The Indianapolis Power and Light Company is a public utility under the jurisdiction of the Public Service Commission and furnishes electric energy for light, heat and power in the city of Indianapolis and the environs. In the schedule of rates and charges heretofore submitted and approved by the Commission, and now effective, there was no provision for "resale of energy". The rate schedules contained a provision that the electric energy furnished by the utility was "not for resale."

One phase of the problem you submit was determined by this office under Attorney General Gilliom in 1926 in an opinion rendered to the Chairman of the Public Service Commission, and reported in the reports of the Attorney General for 1925-1926, at page 513. In that opinion Attorney General Gilliom said:

> "In your letter of June 7th, you state that some owners of large buildings, such as factory and office buildings, also apartment houses purchase electric current and retail it to tenants on rates agreed to between lessor and lessee without such retailers of current in any respect complying with the law regulating public utilities. You state that the rates so charged are in some instances considerably higher than the consumers would have to pay if they would receive their current direct from utilities under rates fixed by the public service commisssion, and you ask for my opinion as to whether a person selling electric current as aforesaid constitutes a public utility within the meaning of the act concerning public utilities."

The then Attorney General quoted from the statute which defined a public utility (Burns' 54-105) as follows:

> "The term 'public utility' as used in this act shall mean and embrace every corporation, company, individual, association of individuals, their lessees, trus-

> tees, or receivers appointed by any court whatsoever, that now or hereafter may own, operate, manage or control any street railway or interurban railway or any plant or equipment within the state for the conveyance of telegraph or telephone messages, or for the production, transmission, delivery or furnishing of heat, light, water or power, or for the furnishing of elevator or warehouse service either directly or indirectly to or for the public, * * *"

The Attorney General then ruled that the cases where electric current was retailed by owners of large buildings, factories and apartment houses came within the letter and the reason of the regulatory provision of the Utility Act, and, that there was no inherent right in any person to furnish any public utility service to any part of the public. The Attorney General said it was clearly the intent of the Legislature that the service which is being given in the matters above stated should be given only upon the authority and under the conditions of the Act concerning public utilities. I concur in the opinion of the former Attorney General.

It seems to me that the resale of energy and the submetering of electric current as contemplated by the schedule of rates submitted for the Commission's approval might lead to corporations undertaking to act as a public utility which have no such authority under their charter.

A user of electric current is entitled to a tribunal where the reasonableness of rates may be inquired into and decided, and where non-discriminatory rates or practices or service may be investigated and prohibited, and this cannot be done unless those who furnish the electric current are public utilities within the jurisdiction of the Commission.

In my opinion the policy of the resale of electricity by one not a public utility is contrary to the public policy of the State of Indiana and ought not to be authorized or encouraged by a provision in a rate schedule which makes available the resale of electricity by one not a public utility under the jurisdiction of the Public Service Commission of Indiana.